

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

JUN 14 2018

Clerk, U S District Court
District Of Montana
Billings

JOHN O. MILLER,

Petitioner,

vs.

LEROY KIRKEGARD,

Respondent.

CV 17-26-BLG-SPW

ORDER ADOPTING
FINDINGS AND
RECOMMENDATIONS

Petitioner John O. Miller, appearing pro se, seeks habeas corpus relief pursuant to 28 U.S.C. §2254. Miller challenges his 1991 conviction in the Twenty-Second Judicial District Court, Stillwater County, Montana, of double homicide. (Doc. 11 at 1).

Pending before the Court are United States Magistrate Judge Timothy Cavan's findings and recommendations on Miller's petition. (Doc. 11). Judge Cavan recommends this Court deny Miller's habeas petition on the merits. (Doc. 11 at 28). Miller filed timely objections to the findings and recommendations, entitling him to de novo review. 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b)(3).

Miller's petition raises three claims. First, Miller claims his guilty plea was not voluntary. Second, Miller claims he received ineffective assistance of counsel

during plea negotiations. Third, Miller argues he was denied due process during the change of plea hearing. (Doc. 12 at 1-6).

“A state court’s determination that a claim lacks merit precludes federal habeas relief so long as ‘fairminded jurists could disagree’ on the correctness of the state court’s decision.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). Thus, even if this Court finds that a petitioner’s claim is meritorious, § 2254(d) requires the Court to go one step further and find the state court’s contrary conclusions objectively unreasonable before granting habeas relief. *Ayala v. Chappell*, 829 F.3d 1081, 1094 (9th Cir. 2016) (citing *Woods v. Sinclair*, 764 F.3d 1109, 1131 (9th Cir. 2014)).

The Court has reviewed de novo Miller’s claims and Judge Cavan’s findings and recommendations and agrees with Judge Cavan in full. Miller’s claims do not survive deferential review under the Antiterrorism and Effective Death Penalty Act because fairminded jurists could disagree on the correctness of the state court’s decision. *Harrington*, 562 U.S. at 101. Therefore, for the reasons stated in Judge Cavan’s findings and recommendations,


IT IS ORDERED the proposed findings and recommendations entered by United States Magistrate Judge Cavan (Doc. 11) are ADOPTED IN FULL.

IT IS FURTHER ORDERED Miller’s petition (Doc. 1) is DENIED.

IT IS FURTHER ORDERED the Clerk of Court is directed to enter by separate document a judgment in favor of Respondent and against Petitioner.

IT IS FURTHER ORDERED a certificate of appealability is DENIED.

DATED this 14th day of June, 2018.


SUSAN P. WATTERS
United States District Judge